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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,048	07/13/2001	Walter L. Peck	peck	2678
26496	7590	01/13/2005	EXAMINER	
GREENBERG & LIEBERMAN 314 PHILADELPHIA AVE. TAKOMA PARK, MD 20912			HAYES, BRET C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,048

Applicant(s)

PECK, WALTER L.

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 9 – 11 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the ridge moving within the arc *during* setup and teardown, does not reasonably provide enablement for the ridge moving within the arc—as a static structure. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims. Examiner suggests revising the claim language to better describe the claimed movement and/or structural relationships between the elements.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 – 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 1 recites the limitations "the earth" in line 2, "the lowermost end" in line 4 and "the ground" in line 7. There is insufficient antecedent basis for these limitations in the claim.

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6. Claim 2 recites the limitations "at least three additional hook mechanisms" in lines 1 and 2 (*emphasis added*) and "said at least three additional rings" in line 2. There is insufficient antecedent basis for these limitations in the claim. Nowhere in the base claim is *a* hook mechanism recited, which frustrates any possibility for additional hook mechanisms. The references to the earth and ground should be adequately recited initially, as in, --an earthen surface--, for example.

7. Claim 3 recites the limitation "said at least three additional rings" in line 2. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 6 recites the limitation "the earth" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 8 recites the limitations "the smallest ring" in line 3, "the earth" in line 4 (2X) and "the largest ring" in line 4. There is insufficient antecedent basis for these limitations in the claim.

10. Claim 9 recites the limitation "the earth" in line 2. There is insufficient antecedent basis for this limitation in the claim. See explanation above.

11. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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13. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Hillestad.
14. Hillestad discloses the claimed invention including a plant stand 10 comprising: at least one vertical support 11 communicating in a removable manner with an earthen surface; an indentation – the crest above 11a on the support 11; at least one ring 15 attached to the support 11; an arc 11a, disposed adjacent to the indentation; and a ridge 15a on the ring 15, the ridge 15a moving within the arc 11a during setup and teardown of the plant stand 10.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 1 – 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillestad in view of US Patent No. 3,397,485 to Peterson.
17. Re – claim 1, Hillestad discloses the invention substantially as claimed including a plant stand 10 comprising: at least one vertical support 11 communicating in a removable manner with an earthen surface; an indentation 11a on the support 11; a bend – the crest above 11a – at a lowermost end of the support 11; at least one ring 15 attached to the support 11; and a ridge 15a on the ring 15, the ridge 15a protruding from the ring 15 and in communication with the indentation 11a. However, Hillestad does not disclose the bend being below the indentation and having sufficient width to accommodate a foot. Peterson teaches a bend 13 – 16 at a lowermost end of a plant stake in the same field of endeavor for the purpose of inserting the stake into an

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earthen surface, best seen in FIG. 2, shown in phantom. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hillestad to include the bend as taught by Peterson in order to insert the stand into an earthen surface. Further, the recitation that an element is “sufficient” to perform a given function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In this case, as long as even a toehold is possible, which it is, the device is capable of performing the given function.

18. Re – claim 2, Hillestad in view of Peterson discloses the invention substantially as claimed. Hillestad further discloses including two additional rings 16, 17 of increasing sizes attached to the support 11, except for at least three additional rings of increasing sizes from ring 15 attached to the support 11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third ring, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

19. Re – claim 3, Hillestad in view of Peterson discloses the invention substantially as claimed. Hillestad further discloses including two additional ridges 16a, 17a for attaching the rings 16, 17 to the support 11, except for at least three additional ridges for attaching the rings 16, 17 to the support 11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third ridge, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

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20. Re – claim 4, Hillestad in view of Peterson discloses the invention substantially as claimed. Hillestad further discloses including two additional vertical supports **12, 13**, except for at least three additional vertical supports. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third vertical support, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

21. Re – claim 5, Hillestad in view of Peterson discloses the invention substantially as claimed. Hillestad further discloses including two additional indentations **11b, 11c** to removably communicate with the ring **15**, and rings **16, 17**, except for at least three additional indentations to removably communicate with the ring, and rings. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third indentation, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

22. Re – claims 6 and 7, Hillestad in view of Peterson discloses the invention substantially as claimed. Hillestad further discloses including two additional vertical supports **12, 13** having such a bend as previously described, except for at least three additional vertical supports. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third vertical support, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

23. Re – claim 8, Hillestad in view of Peterson discloses such an arrangement.

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24. Claims 10 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Hillestad in view of Peterson in view of US Patent No. 903,986 to Klahn et al.

25. Hillestad in view of Peterson discloses the invention substantially as claimed as applied to claim 9 above. However, Hillestad does not disclose the ridge **15a – 15c** rotating within the indentation **11a – 11c** and between a locked and unlocked position. Klahn et al. teach a ridge **4** rotating within an indentation **3** between a locked and unlocked position, see FIGS. 1 and 2, for example, in the same field of endeavor for the purpose of collapsing a plant holder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hillestad in view of Peterson to include the ridge rotating in the indentation between a locked and unlocked position as taught by Klahn et al. in order to collapse a plant holder.

Response to Arguments

26. Applicant's arguments with respect to claims 1 – 11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

1/7/05


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